IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6343 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANEKBEN W/O RAMESH GOVIND UMARIGAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SUNIL C PATEL for Petitioner

D.N. PATEL LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 03/03/2000

ORAL JUDGEMENT

The detenu has filed this petition as she has been detained by an order at Annexure-A dtd.1/8/99. It has been issued by the respondent NO.1 in exercise of powers under Sec. 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (`PASA Act' for short).

2. Grounds of detention served on the detenu are on the record at Annexure-B, from which it appears that a raid was carried out at the house of the detenu on 27/5/99 at about 7.40 p.m., and the detenu was found indulging in nefarious activities by actively assisting Pratimaben and Bhanumatiben, in preparing country liquor. In all 380 liters of country made liquor were seized and the police registered an offences at Umara Police Station vide C.R. No.394/99 for the offence punishable under the provisions contained in Bombay Prohibition Act. The detenu was detained on 27/5/99. Chargesheet has been filed against the detenu on 29/6/99 and the case is pending before the trial Court for trial. It is pointed out in the grounds of detention that the detenu if not permitted by innocent persons to store the liquor in their houses, then she would beat the innocent witnesses. Such an incident took place on 14/3/99. The witness was beaten by the detenu, people collected, some witnesses came forward to assist the witness as a result of which the detenu's associates rushed the place with iron rod and rushed towards the people as a result of which the people ran away. As a result of which not only the people ran away but the shops were closed and even traffic was disturbed. The detenu was such a dangerous person that only after the witness requested her to pardon only thereafter the witness was allowed to go. Similar incident dtd. 25/4/99 is also relied upon by the Detaining Authority. The Detaining Authority was satisfied that the detenu is required to be detained as she is a bootlegger and is acting in a manner prejudicial to the maintenance of law and order and in fact tempo of the locality was disturbed on several occasions.

3. Without entering into the legality of the grounds of detention order, the petition is required to be diposed of only on a short ground, as the Detaining Authority has not made report as contemplated under Sec. 3 of the PASA Act. The petitioner has specifically stated in the grounds on page 14 as under ;

"The petitioner states and submit that under Sec.3(3) of the Act, the detaining authority is required to forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter. The petitioner calls upon the respondents to state the date on which such report has been made by the detaining authority to the State Government. If it is not made

forthwith, then the procedural safeguard under the Act is violated and the continued detention of the petitioner is illegal, null and void."

As the affidavit is not filed by the Detaining Authority and though the State has filed affidavit, has not disclosed the fact that on which date the detaining authority has reported the fact to the State Government, this Court has no alternate but to say that the order of continued detention of the petitioner is bad and illegal, hence the detention order is required to be quashed and set-aside and the same is hereby quashed and set aside. The petition is allowed. Rule is made absolute.

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